

SOUTH AFRICA / JUDGMENT

Moshikaro v Malabela and Another (26989/04) [2005] ZAGPHC 335 (4 November 2005) [2005] ZAGPHC 335

COURT

High Courts - Gauteng

BEFORE

JCW van Rooyen

CASE / FILE NUMBER

26989/04

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IN THE HIGH
COURT OF SOUTH AFRICA
(TRANVAAL
PROVINCIAL DIVISION)

CASE NO:

26989/04

Date: 4 November
2005

UNREPORTABLE

In the matter

between:-

SYDNEY

MOSHIKARO Applicant

and

PATRICK

MALABELA 1st

Respondent

PORTIA

MALABELA 2nd Respondent

JUDGMENT

Sequestration – case not made out that respondents personally liable for debts of Club.
Application for provisional sequestration of respondents, accordingly, dismissed.

Van Rooyen AJ

[1] This is an application for the provisional sequestration of the respondents' estate. Initially only first respondent was cited. When the matter was heard on 10 May 2005 the first respondent argued that he was married in community of property and that his spouse should have been joined. The matter was then postponed sine die and costs reserved. Since then his spouse has been joined and this procedural aspect of the application has fallen away. Since the first respondent was personally the force behind the club, I will simply refer to first respondent as the "respondent" in stead of referring to the "respondents".

[2] The applicant alleges, inter alia, that he was appointed by the respondent in the Dynamos Football Club as a professional football player in terms of a players'

contract; the respondent personally was obliged to pay him a salary and signing on fee; the respondent has failed to pay him a salary for two months of R30 000,00 and a signing on fee of R160 000,00; applicant submitted a dispute regarding the non-payment to the Dispute Resolution Chamber of the National Soccer League, which made an award in the applicant's favour for R190 000,00; the respondent has ignored the award and remains indebted to the applicant in the amount of R190 000,00; the respondent is insolvent;

and that it would be to the advantage of the respondent's creditors if the estate is sequestrated. The respondent is also

indebted to other players, whose affidavits confirm such indebtedness and were attached to the founding affidavit.

[2] The respondent disputed that there had been proper service. In the light of the conclusion which I have reached, it is unnecessary to decide this point.

[3] Before the justifiability of a provisional sequestration order may be considered in the light of alleged debts, the main argument of respondent's counsel, Mr Nel, must be decided: is respondent personally liable for the debts of the Dynamos Football Club? The applicant brings this application against the respondent in his personal capacity and refers to a contract dated 22nd October 2002, which governs his relationship with the Dynamos Football Club. The respondent entered into the agreement "for and on behalf of the DYNAMOS Football Club." It was argued that Dynamos Football Club is merely the name of the club, which has since 30 September 2002 been owned by a company – Pats Dynamos (Pty) Ltd, of which the respondent is the sole director. Copies of the relevant registration forms of the Company are attached to the respondent's answering affidavit. The applicant entered into a players' contract with the Company on 22 October 2002 after its registration as

a company on the 30th September 2002.

- [3] The applicant averred that he had submitted a dispute to the NSL-Dispute Resolution Centre which eventually ruled that "DYNAMOS FC" had to pay the applicant a total sum of R190 000,00. It is on the strength of the respondent's alleged failure to pay in terms of this award that the applicant brings this application. Respondent avers that Dynamos Football Club is not obliged to act in terms of this award, because: (1) the club never received notice of the referral and subsequent hearing of the dispute. The award was also sent to the wrong fax; (2) the ruling which the respondent received had no case number, was not signed and did not direct that income tax must first be deducted from the R190 000,00. The applicant has only now, in his replying affidavit, produced a signed award; (3) the respondent is not liable in his personal capacity for the debt, if any, of DYNAMOS FC, but the Company is responsible. The respondent also denied liability towards other players whose claims were attached.
- [4] The first issue is whether respondent may be held responsible personally for what are clearly debts of the Club. There is no reference to the company in the contract which was attached. I will have to accept that the other three players' contracts do not differ from the contract with the applicant. In any case, the claims of the other three players are not documented well and it would have been impossible to have decided their validity on the papers before me.
- [5] Pats Dynamos (Pty) Ltd was registered as a company on 30 September 2002. On the 22nd October 2002 applicant concluded a contract with Pat Malabela (respondent) "acting in...1 of a Club Resolution or Authority for and on behalf of Dynamos Football Club (hereinafter referred to as "the Club") on the one part and Sydney Moshikaro..." The "Club" is then referred to several times in the contract. The contract, which was concluded on a standard Premier Soccer League form, also provides that in so far as the Club rules are in conflict with either the rules of the National Soccer League and/or the South African Football Association rules, then the rules of the two latter bodies shall prevail".
- [6] Applicant refers to the fact that respondent has in different litigation constantly referred to himself as the "sole owner of Dynamos" and that this is indicative of personal responsibility for the contracts with players. I do not agree. It is clear from the contract with applicant that respondent was acting "on behalf of" the Club. No case of misrepresentation is made out on the papers and the only question is whether the contract sufficiently identifies the club as the legal entity with which the applicant contracted. From the contract it, of course, does not appear whether the Club is not simply a name which respondent uses for his personal activities in the football world. Yet, the contract makes it clear that he is acting on behalf of an entity known as Dynamos Football Club. This reference to agency is sufficient to have put the applicant on guard as to his contract. The award referred to earlier also does not refer to personal responsibility of respondent but constantly refers to the "Club". It is true that the registration of the company refers to Pats Dynamos (Pty) Ltd and that there is no documentary proof that the assets were transferred to the company. Ultimately, however, I am not convinced on the papers that respondent can be held responsible for a contract

which he clearly signed “on behalf of” “Dynamos Football Club”. This was done openly in the contract and is the best evidence before me of the respondent’s role in the contract: he is an agent for an entity and it has not been shown that he accepted personal responsibility as a co-debtor or in accordance with a guarantee. This is also not a case where there is sufficient information before me that once the veil is lifted, the company disappears and one is then left with Pat Malabela, the respondent. In essence Pat Malabela has identified himself in the contract as an agent and nothing more and the contract was signed by the applicant and Pat Malabela – obviously as agent.

[7] I am, accordingly, not convinced on the papers that applicant has made out a case that respondents are liable for the debts of the Dynamos Football Club. That being my conclusion, it is not necessary to inquire into the soundness of the debts.

The application is dismissed with costs, costs including the reserved costs on the 10th May 2005.

JCW van Rooyen.....

Acting Judge of the High Court

4 November 2005

For the applicant: adv L Hollander, Sandton, instructed by Jacobson & Levy, Pretoria.

For the respondents: adv JFA Nel, High Court Chambers, Pretoria, instructed by MS
Shaik Inc., Pretoria.

1 The word does not appear on the attached copy of the contract due to poor copying. I do not, however, have any reason to believe that it does not simply refer to authorization by the Club.

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Prepared on 11 October 2026 · Esheria